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3
4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JULIE V.,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Deputy
Commissioner of Social Security
Operations,

10 Defendant.
11

Case No. 2:17-cv-01274-TLF

ORDER AFFIRMING
DEFENDANT'S DECISION TO
DENY BENEFITS

12 Julie V. has brought this matter for judicial review of defendant's denial of her
13 applications for disability insurance and supplemental security income (SSI) benefits. The parties
14 have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. §
15 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below,
16 the undersigned affirms defendant's decision to deny benefits.

17 FACTUAL AND PROCEDURAL HISTORY

18 On February 26, 2014, plaintiff filed an applications for a period of disability and
19 disability insurance benefits. Dkt. 8, Administrative Record (AR) 14. She filed an application for
20 SSI benefits on December 15, 2014. *Id.* In both applications, she alleged that she became
21 disabled beginning November 1, 2013. These applications were denied by the Social Security
22 Administration on August 7, 2014, and reconsideration was denied on October 29, 2014. *Id.* A
23 hearing was held before an administrative law judge ("ALJ"), at which plaintiff appeared and
24 testified, as did a vocational expert. *Id.*

1 In a decision dated March 30, 2016, the ALJ found that plaintiff was not disabled. AR
2 27-28. Plaintiff's request for review was denied by the Appeals Council on June 20, 2017,
3 making the ALJ's decision the final decision of the Commissioner. AR 1. Plaintiff appealed to
4 this Court on August 29, 2017. Dkt. 4; 20 C.F.R. §§ 404.981, 416.1481.

5 In her March 2016 decision, the ALJ resolved steps one and two of the five-step
6 sequential analysis in plaintiff's favor. AR 16-17. The ALJ found that the plaintiff had not
7 engaged in substantial gainful activity since the alleged onset of her disability and that she had
8 the following severe impairments: affective disorder, personality disorder, and substance abuse
9 disorder. AR 17. At step three, the ALJ found that the plaintiff does not have an impairment or
10 combination of impairments that meets or medically equals the severity of one of the
11 impairments listed in the Social Security Administration's regulations. AR 17.

12 In assessing the plaintiff's residual functional capacity (RFC), the ALJ found that the
13 plaintiff had the residual functional capacity (RFC)

14 **to perform a full range of work at all exertional levels, but with the following**
15 **non-exertional limitations: she has sufficient concentration to understand,**
16 **remember, and carryout [sic] simple, repetitive tasks; can maintain**
17 **concentration and pace in 2 hour increments with usual and customary**
18 **breaks; can work in the same room with a small group of coworkers, up to**
19 **10, but should not work in coordination with them; can have only superficial**
20 **and occasional interaction with the general public[;] superficial means she**
can refer the public to others to respond to their demands or requests, but
she does not resolve those demands or requests herself; this restriction does
not apply to working with the public on the telephone; she can interact with
supervisors occasionally; can adapt to simple workplace changes, as may be
required for simple, repetitive tasks; and can set simple workplace goals as
would be required for simple, repetitive tasks.

21 AR 19 (emphasis in original). Because of this assessment of the plaintiff's RFC, the ALJ found
22 that the plaintiff was not disabled because there were a number of jobs that exist in significant
23 numbers in the national economy that the plaintiff could perform. AR 27-28.

1 Plaintiff seeks reversal of the ALJ's decision and remand for an award of benefits. She
2 alleges that the ALJ erred:

- 3 (1) in evaluating the medical evidence;
- 4 (2) in discounting plaintiff's subjective testimony;
- 5 (3) in discounting certain lay witness testimony; and
- 6 (4) consequently, in assessing plaintiff's residual functional capacity and
7 finding she can perform jobs existing in significant numbers in the
national economy.

8 For the reasons set forth below, the Court finds that the ALJ did not err in assessing the
9 medical opinion evidence, plaintiff's testimony, or the lay witness testimony, and therefore that
10 she did not err in determining the plaintiff's residual functional capacity and that she is not
11 disabled.

12 DISCUSSION

13 The Court will uphold an ALJ's decision unless: (1) the decision is based on legal error;
14 or (2) the decision is not supported by substantial evidence. *Revels v. Berryhill*, 874 F.3d 648,
15 654 (9th Cir. 2017). Substantial evidence is "such relevant evidence as a reasonable mind might
16 accept as adequate to support a conclusion." *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir.
17 2017) (quoting *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir.
18 1988)). This requires "more than a mere scintilla," though "less than a preponderance" of the
19 evidence. *Id.* (quoting *Desrosiers*, 846 F.2d at 576).

20 The Court must consider the administrative record as a whole. *Garrison v. Colvin*, 759
21 F.3d 995, 1009 (9th Cir. 2014). The Court is required to weigh both the evidence that supports,
22 and evidence that does not support, the ALJ's conclusion. *Id.* The Court may not affirm the
23 decision of the ALJ for a reason upon which the ALJ did not rely. *Id.* Only the reasons identified
24 by the ALJ are considered in the scope of the Court's review. *Id.*

1 “If the evidence admits of more than one rational interpretation,” that decision must be
2 upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). That is, “[w]here there is conflicting
3 evidence sufficient to support either outcome,” the Court “must affirm the decision actually
4 made.” *Allen*, 749 F.2d at 579 (quoting *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).

5 **I. The ALJ’s Evaluation of the Medical Opinion Evidence**

6 Plaintiff asserts that the ALJ failed to provide clear and convincing reasons in
7 discrediting the opinions of a treating psychologist and two examining psychologists.
8 Specifically, she asserts that the ALJ did not give sufficient weight to the opinions of Tasha
9 Morris, Ph.D., Margaret Dolan, Ph.D., or David Widlan, Ph.D.

10 The ALJ is responsible for determining credibility and resolving ambiguities and
11 conflicts in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where
12 the evidence is inconclusive, “questions of credibility and resolution of conflicts are functions
13 solely of the [ALJ].” *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such situations,
14 “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d
15 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the evidence “are material (or
16 are in fact inconsistencies at all) and whether certain factors are relevant to discount” medical
17 opinions “falls within this responsibility.” *Id.* at 603.

18 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings
19 “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 722. The ALJ can do this
20 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
21 stating his interpretation thereof, and making findings.” *Id.* at 725. The ALJ also may draw
22 inferences “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court
23 itself may draw “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v.*
24 *Bowen*, 881 F.2d 747, 755 (9th Cir. 1989).

1 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
2 opinion of either a treating or examining physician. *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th
3 Cir. 2017) (quoting *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)). Even
4 when a treating or examining physician’s opinion is contradicted, an ALJ may only reject that
5 opinion “by providing specific and legitimate reasons that are supported by substantial
6 evidence.” *Id.* However, the ALJ “need not discuss *all* evidence presented” to him or her.
7 *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation
8 omitted) (emphasis in original). The ALJ needs to explain why “significant probative evidence
9 has been rejected.” *Id.* Essentially, “an ALJ errs when he rejects a medical opinion or assigns it
10 little weight while doing nothing more than ignoring it, asserting without an explanation that
11 another medical opinion is more persuasive, or criticizing it with boiler plate language that fails
12 to offer a substantive basis for his conclusion.” *Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th
13 Cir. 2014).

14 In general, more weight is given to a treating physician’s opinion than to the opinions of
15 those who do not treat the claimant. *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). On
16 the other hand, an ALJ need not accept the opinion of a treating physician if that opinion is brief,
17 conclusory, and inadequately supported by medical findings or by the record as a whole. *Batson*
18 *v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). An examining physician’s
19 opinion is “entitled to greater weight than the opinion of a nonexamining physician.” *Lester*, 81
20 F.3d at 830. A non-examining physician’s opinion may constitute substantial evidence if “it is
21 consistent with other independent evidence in the record.” *Id.* at 830-31.

1 The ALJ must evaluate any medical opinion based on the factors in the SSA regulations,
2 including: 1) the examining relationship; 2) the treatment relationship; 3) supportability; 4)
3 consistency; and 5) specialization. *See* 20 C.F.R. § 404.1527(c); *Trevizo*, 871 F.3d at 675.

4 Here, the plaintiff contends with respect to all three doctors that the ALJ's reasons for
5 discounting their opinions were not "clear and convincing." In contrast, the Commissioner
6 argues the ALJ's reasons *were* "specific and legitimate."

7 Because Dr. Morris, Dr. Dolan, and Dr. Widlan's opinions were contradicted by state-
8 agency reviewing doctors, John Gilbert, Ph.D., and Eugene Kester, M.D., the ALJ was required
9 to give only specific and legitimate reasons, supported by substantial evidence, to reject their
10 opinions. AR 89-90, 102-03; *see Widmark v. Barnhart*, 454 F.3d 1063, 1066-67 (specific and
11 legitimate standard applied where state agency reviewing physician contradicted examining
12 physician). Although the state-agency reviewing opinions alone cannot constitute substantial
13 evidence for rejecting examining and treating opinions, those opinions "may suffice to establish
14 a conflict among the medical opinions[.]" *Id.* at 1067 & n. 2; *see also Lester*, 81 F.3d at 831
15 (ALJ may reject examining opinion in favor of reviewing opinion for specific and legitimate
16 reasons supported by substantial evidence).

17 A. Treating Psychologist: Tasha Morris, Ph.D.

18 The plaintiff contends that the ALJ failed to give proper weight to the opinion of Dr.
19 Morris, her treating psychologist. Plaintiff contends that as Dr. Morris is a treating source, her
20 opinion should be afforded greater weight.

21 Dr. Morris completed a check-the-box form in December 2015. AR 316. She
22 supplemented that form with a two-page declaration in January 2016. AR 413. She based her
23 opinions on her observations during three years as plaintiff's treating psychologist for bipolar
24 disorder and borderline personality disorder. *Id.*

1 Dr. Morris opined that plaintiff is markedly limited in interacting appropriately with
2 supervisors and coworkers, and that she is extremely limited in responding appropriately to work
3 pressures and to changes in a routine work setting. AR 362. In the 2015 form, Dr. Morris
4 explained that plaintiff's "anxiety and mood symptoms greatly impair her stress tolerance [and]
5 her ability to function in a normal stressful work environment." *Id.* In the 2016 declaration, Dr.
6 Morris listed several factors that contribute to plaintiff's limitations: "daily stressors such as
7 criticism, supervision, direction or oversight . . . have a deleterious effect on her mental health."
8 She also referred to paranoid ideation and "bizarre and irrational thinking" when plaintiff feels
9 threatened, and stated that plaintiff "generally disengages" when she feels threatened. *Id.* Dr.
10 Morris further opined that the plaintiff meets listing 12.06. *Id.* Finally, she opined that the
11 plaintiff has marked limitations in social functioning and concentration, persistence, or pace, and
12 that she cannot "perform[] even simple, repetitive tasks with limited interactions with co-
13 workers and supervisors." *Id.*

14 The ALJ gave Dr. Morris's opinion "minimal weight." She offered two reasons: First, the
15 ALJ noted that the determination of whether a claimant can work is reserved to the
16 Commissioner. AR 25. She referred to her prior discussion, which found that the record as a
17 whole does not support a disability determination and that, contrary to Dr. Morris's opinion, the
18 plaintiff's condition does not meet a mental health listing. AR 17, 23. Second, the ALJ found that
19 Dr. Morris's "own mental status examinations . . . routinely indicated that the claimant had few
20 mental health problems or symptoms." AR 25.

21 "The medical opinion of a claimant's treating doctor is given 'controlling weight' so long
22 as it 'is well-supported by medically acceptable clinical and laboratory diagnostic techniques and
23 is not inconsistent with the other substantial evidence in [the claimants] case record.'" *Revels v.*

1 *Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(c)(2)). If the treating
2 opinion is uncontradicted, an ALJ must provide clear and convincing reasons to reject it. *Id.*

3 On the other hand, when other evidence contradicts a treating or examining physician's
4 opinion, the ALJ must provide "specific and legitimate reasons" to it. *Revels*, 874 F.3d at 654.
5 "The ALJ can meet this burden by setting out a detailed and thorough summary of the facts and
6 conflicting clinical evidence, stating his interpretation thereof, and making findings." *Id.*
7 (quoting *Magallanes*, 881 F.2d at 751). In either case, substantial evidence in the record must
8 support the ALJ's reasons. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).

9 The ALJ correctly noted that determinations of whether a claimant can work are reserved
10 to the Commissioner. 20 C.F.R. § 404.1527(d)(1); SSR 96-5p. The ALJ was nevertheless
11 required to offer reasons for discounting Dr. Morris's opinions about plaintiff's limitations, and,
12 as noted above, those reasons must be specific and legitimate. *See Widmark*, 454 F.3d at 1066-
13 67.

14 The ALJ's finding that Dr. Morris's treatment notes—specifically the mental status
15 examinations she performed—did not support her opinion was a specific and legitimate reason to
16 discount that opinion. *See Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 692–93 (9th Cir.
17 2009) (holding that contradiction between treating physician's opinion and own treatment notes
18 is specific and legitimate reason to reject opinion); *Houghton v. Comm'r Soc. Sec. Admin.*, 493 F.
19 App'x 843, 845 (9th Cir. 2012) (holding that finding that doctors' opinions were "internally
20 inconsistent, unsupported by their own treatment records or clinical findings, [and] inconsistent
21 with the record as a whole" is specific and legitimate basis to discount them). Substantial
22 evidence supports that reason: Dr. Morris's examinations contained very few indications of
23 mental-health issues, and she consistently found that plaintiff showed, for instance, logical,
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1 coherent, and goal-directed thought processes, that the plaintiff was pleasant, cooperative, and
2 engaged, that she showed good-to-excellent insight and judgment, and that she showed no signs
3 of paranoia. *See* AR 290, 293, 296, 299, 302, 305, 347, 350, 353, 356, 359. Nor do Dr. Morris's
4 treatment notes otherwise contain indications of concern about limitations from mental health.
5 *See generally* AR 289-306, 346-60. The ALJ thus gave reasons to discount Dr. Morris's opinions
6 that were both specific and legitimate and supported by substantial evidence.

7 B. Examining Psychologist: Margaret Dolan, Ph.D.

8 Plaintiff also contends that the ALJ erred in discounting the opinion of Dr. Dolan, an
9 examining psychologist. AR 31.

10 Dr. Dolan examined the plaintiff in August 2014. AR 321. She conducted a clinical
11 interview and a mental-status examination and reviewed four psychiatric reports from Dr.
12 Morris. *Id.* She diagnosed plaintiff with Bipolar I Disorder, writing "She has experienced one
13 psychotic episode with manic features. She seems to be in a major depression with depressed
14 mood, sleep disorder, fatigue, feelings of worthlessness, diminished ability to concentrate. These
15 symptoms certainly cause significant distress." AR 329. She also noted, "[t]he fact that she had a
16 reportedly stable work history prior to her hospitalization is hopeful. It isn't clear why her
17 depressive symptoms are not stabilized enough to return to work or when she will be able to do
18 so." AR 330.

19 Dr. Dolan's opinions on plaintiff's functioning were equivocal. She found that
20 understanding and memory "might be a problem on a job. However, they were not in the past."
21 AR 330. She wrote that plaintiff's concentration and persistence "are seriously affected by her
22 illness and seem to have been the most serious deterrent to holding a job," though she added
23 plaintiff "does report being able to concentrate on movies, etc." AR 331. She found that
24 plaintiff's reasoning and social interaction were unimpaired. She indicated that adaptation may
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1 be a problem for the plaintiff but that “a change in medication and return to counseling might be
2 helpful.” *Id.*

3 The ALJ gave Dr. Dolan’s opinion “some weight.” AR 24. The ALJ determined that Dr.
4 Dolan’s opinion about the plaintiff’s ability to work was on an issue reserved to the
5 Commissioner. And the ALJ stated that the record as a whole does not support the limitations Dr.
6 Dolan found, pointing to Dr. Dolan’s own exam notes and to other evidence including findings
7 in mental status examinations that the plaintiff’s concentration, persistence, and pace were
8 unimpaired. The ALJ noted that other exams and treatment notes from around the same time
9 indicated that plaintiff was in a “low period” due to a breakup but that her mental status was
10 mostly normal and she was managing her anxiety. *Id.*; *see* AR 358-59. The ALJ further reasoned
11 that the infrequency of plaintiff’s appointments with her treating psychiatrist—every three
12 months—“is not indicative of someone as severely limited” as Dr. Dolan found. AR 24.

13 The plaintiff contends that, contrary to the ALJ’s finding, Dr. Dolan’s observations
14 actually supported the limitations Dr. Dolan found. She contends that Dr. Widlan and Dr.
15 Morris’s opinions supported those limitations, as well. The plaintiff further contends that the
16 ALJ lacked a basis to find that the treatment plaintiff received was too conservative for the
17 limitations alleged: while she saw Dr. Morris every 2-3 months to adjust her medications, she
18 was attending counseling every week, and Dr. Dolan was aware of this in forming her opinions.

19 As noted above, Dr. Dolan’s opinions were for the most part equivocal. Dr. Dolan did not
20 opine that plaintiff is functionally impaired in any area other than “sustained concentration and
21 persistence.” *See* AR 330-31. Thus, the plaintiff has not shown that the ALJ actually failed to
22 incorporate any other functional impairment in her RFC. *See* AR 19.

1 With respect to concentration and persistence, Dr. Dolan opined that these functions “are
2 seriously affected by [plaintiff’s] illness.” AR 331. (Dr. Dolan qualified this opinion, too: those
3 functions “seem to have been the most serious deterrent to holding a job,” “[h]owever, she does
4 report being able to concentrate on movies, etc.” *Id.* (emphasis added).) The ALJ gave a specific
5 and legitimate reason for rejecting this opinion, as neither Dr. Dolan’s examination nor other
6 mental status exams noted any limitations to concentration and persistence. *See* AR 326-27; *see*
7 *also* AR 290, 293, 296, 299, 302, 305, 347, 350, 353, 356, 359 (mental status examinations). A
8 lack of support in a doctor’s clinical findings and inconsistency with the record as a whole are
9 specific and legitimate reasons to discount the doctor’s opinion. *Houghton*, 493 F. App’x at 845.
10 The plaintiff has not shown that the ALJ’s analysis of Dr. Dolan’s opinion was erroneous.

11 C. Examining Psychologist: David Widlan, Ph.D.

12 Finally, plaintiff contends that the ALJ failed to give proper weight to the opinion of
13 treating psychologist Dr. Widlan.

14 Dr. Widlan conducted a psychological evaluation of plaintiff in November 2014. AR 334.
15 He performed a clinical interview and a mental status exam, though he did not review any
16 records. *Id.* Dr. Widlan diagnosed the plaintiff with bipolar disorder and “Depression, Severe
17 with psychotic features.” He also listed a diagnosis of “Generalized Anxiety Disorder, vs. Panic
18 Disorder,” and a rule-out diagnosis of bipolar schizoaffective disorder. AR 335.

19 Dr. Widlan opined that plaintiff is severely limited in her ability to complete a normal
20 workday or work week and markedly limited in her abilities to adapt, communicate, or perform
21 effectively. The ALJ gave “some” weight to Dr. Widlan’s opinion, AR 24, and reasoned that it
22 was “based on incomplete information” because plaintiff did not tell him that she was “attending
23 school” and “receiving fairly good grades” at the time. Plaintiff also did not tell him that “the
24 source of much of her mental stress” around that time was her breakup, as she had told her
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1 therapist. *See* AR 389-90. The ALJ stated that “if the doctor had access to this information, it is
2 likely that his opinion would have been altered.” AR 24. Nonetheless, the ALJ stated, she
3 incorporated many of the limitations Dr. Widlan assigned.

4 The plaintiff contends that the ALJ based her reasoning on her own presumptions and
5 speculation about how Dr. Widlan would have considered the missing information.

6 A doctor’s reliance on incorrect or incomplete information in forming an opinion is a
7 specific and legitimate reason to discount the opinion. *See Chaudhry v. Astrue*, 688 F.3d 661,
8 671 (9th Cir. 2012); *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989). Substantial evidence
9 supports the ALJ’s finding that Dr. Widlan was not aware of plaintiff’s breakup or her recent
10 attendance at online school. *See* AR 335 (describing the plaintiff’s activities of daily living as
11 “engaging in basic activities”).

12 The record also supports the ALJ’s inference that this information was significant to
13 assessing plaintiff’s condition at the time. In particular, the treatment notes at plaintiff’s visit to
14 Dr. Morris in September 2014 focused on her experience during the breakup, as did each of her
15 counseling sessions in September and October 2014. AR 358-60. This was plaintiff’s only visit
16 to Dr. Morris between April 2014 and March 2015; and the plaintiff did not visit the counselling
17 office between November and April 2014. *See* AR 289, 355, 382, 389.

18 The plaintiff further contends that because her breakup happened after her alleged onset
19 date, November 1, 2013, it should not be considered a cause of her disabilities. Yet it does not
20 follow that (as plaintiff asserts) the ALJ would not have substantial evidence upon which to
21 discount Dr. Widlan’s opinion due to his ignorance of the breakup. Dr. Widlan examined the
22 plaintiff at one point in time—November 2014—and the ALJ reasonably drew the inference
23 from the record that information about her life at that time would affect Dr. Widlan’s assessment
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1 of plaintiff's mental health condition. Plaintiff's argument assumes what it sets out to prove: that
2 she was disabled as of her alleged onset date.

3 The plaintiff also contends that, because her testimony shows her online classwork was
4 not demanding in terms of causing stress, and that she stopped her coursework at University of
5 Phoenix because she had trouble accepting feedback, Dr. Widlan's lack of information about her
6 coursework did not justify rejecting his opinion. But whether or not the information about
7 plaintiff's schoolwork was relevant to assessing plaintiff's condition is for the ALJ to determine
8 in the first instance. *Morgan*, 169 F.3d at 601. The Court cannot say that the ALJ was
9 unreasonable to infer that Dr. Widlan would likely have had a different assessment of plaintiff's
10 capabilities if he knew that plaintiff could perform 10 to 20 hours of online coursework per week
11 and attain good grades.

12 II. **The ALJ's Assessment of Plaintiff's Subjective Testimony**

13 The plaintiff also contends that the ALJ erred in discounting her subjective testimony.

14 In a function report, the plaintiff stated that she did not get out of bed and preferred not to
15 be around people because of her mental health conditions. AR 242, 246-47. She also stated that
16 she could pay attention for only 20 minutes, had trouble with memory and completing tasks, and
17 experienced paranoia around authority figures. AR 247-48. (She did not report difficulty with
18 concentration, understanding, following instructions, or getting along with others. AR 247.)

19 At the ALJ hearing, the plaintiff testified that she experienced paranoia at "being judged"
20 at work, AR 49, that she does not like to go into crowds or do much outside of the house, AR 60-
21 61, and that she has short-term memory problems, AR 61.

22 The plaintiff testified that she attended two online colleges for one quarter each. She said
23 she did not like one school because an administrator called her with feedback after she submitted
24 every paper and "being criticized that much was very difficult for me." AR 55, 63. She stated
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1 that she did not follow through with a second online school. AR 56, 64. She said of both, “I don’t
2 know why I stopped going,” though she also said of University of Phoenix, “I didn’t like . . . how
3 I was being treated.” AR 55.

4 The ALJ discounted the plaintiff’s testimony about her symptoms for three main reasons:
5 First, the ALJ found that the objective evidence in the medical record does not support the
6 severity of the limitations plaintiff alleges. Second, the ALJ found that plaintiff’s treatment and
7 the fact she stopped attending therapy also does not indicate she is as limited as she alleges. And
8 third, the ALJ found that treatment notes indicated that plaintiff’s mental-health condition was
9 stable or “baseline.” AR 20-24. The ALJ also observed that plaintiff’s activities, including
10 schoolwork and living with friends, as well as her ability to hold jobs for two to three years at a
11 time, undermine her testimony. AR 24; *see* AR 42. And the ALJ found that plaintiff’s failure to
12 report substance abuse to her providers “further diminishes the plausibility of her allegations.”
13 AR 23; *see* AR 51.

14 Questions of credibility are solely within the control of the ALJ. *Sample v. Schweiker*,
15 694 F.2d 639, 642 (9th Cir. 1982). The Court should not “second-guess” this credibility
16 determination. *Allen v. Heckler*, 749 F.2d 577, 580 (9th Cir. 1984). In addition, the Court may
17 not reverse a credibility determination where that determination is based on contradictory or
18 ambiguous evidence. *See id.* at 579. Even if the reasons for discrediting a claimant’s testimony
19 are properly discounted, that does not render the ALJ’s determination invalid as long as that
20 determination is supported by substantial evidence. *See Tonapetyan v. Halter*, 242 F.3d 1144,
21 1148 (9th Cir. 2001).

22 When gauging a plaintiff’s credibility, an ALJ must engage in a two-step process. First,
23 the ALJ must determine whether there is objective medical evidence of an underlying
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1 impairment that could reasonably be expected to produce some degree of the alleged symptoms.
2 *Smolen v. Chater*, 80 F.3d 1273, 1281-1282 (9th Cir. 1996). If the first step is satisfied, and
3 provided there is no evidence of malingering, the second step allows the ALJ to reject the
4 claimant's testimony of the severity of symptoms if the ALJ can provide specific findings and
5 clear and convincing reasons for rejecting the claimant's testimony. *Id.* To reject a claimant's
6 subjective complaints, the ALJ must provide "specific, cogent reasons for the disbelief." *Lester*,
7 81 F.3d at 834 (citation omitted). The ALJ "must identify what testimony is not credible and
8 what evidence undermines the claimant's complaints." *Id.*; *see also Dodrill v. Shalala*, 12 F.3d
9 915, 918 (9th Cir. 1993).

10 Here, the ALJ gave clear and convincing reasons for discounting plaintiff's testimony
11 about the severity of her symptoms.

12 Determining that a claimant's complaints are "inconsistent with clinical observations"
13 may satisfy the clear and convincing requirement. *Regennitter v. Commissioner of Social Sec.*
14 *Admin.*, 166 F.3d 1294, 1297 (9th Cir. 1999); *see also Fisher v. Astrue*, 429 Fed. App'x 649, 651
15 (9th Cir. 2011). A claimant's pain testimony, however, may not be rejected "solely because the
16 degree of pain alleged is not supported by objective medical evidence." *Orteza v. Shalala*, 50
17 F.3d 748, 749-50 (9th Cir. 1995). The same is true with respect to a claimant's other subjective
18 complaints. *See Byrnes v. Shalala*, 60 F.3d 639, 641-42 (9th Cir. 1995).

19 The record supports the ALJ's conclusion that the severe limitations plaintiff alleged
20 were inconsistent with the medical record. Plaintiff was evaluated to be exhibiting a constricted
21 affect on two occasions and a depressed mood and ruminations on one; in her exam with Dr.
22 Dolan she had difficulty in a short-term memory exercise. AR 293, 326, 330, 353. Yet, as
23 discussed above, the numerous mental-status examinations in the record otherwise show few
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1 cognitive difficulties or other indications that her mental-health issues were not controlled. *See*
2 AR 290, 293, 296, 299, 302, 305, 324-28, 347, 350, 353, 356, 359.

3 The plaintiff asserts that the ALJ downplayed other positive indications of mental-health
4 issues in the record, such as her reports that she was fired from a job for being tardy too often.
5 Dkt. 13, p. 12. But even if a claimant's self-reported reason for being terminated can be relied on
6 to support the claimant's other statements (a circular argument), the record is ambiguous as to
7 whether the firing was related to plaintiff's mental health. *See* AR 292 (noting that plaintiff is
8 "wondering why she struggles so much trouble getting to work on time [sic]," and citing external
9 stressors as a factor). A person can be tardy to work for myriad reasons, most of which do not
10 indicate mental-health limitations. Resolving such ambiguities is primarily the ALJ's
11 responsibility. *Reddick*, 157 F.3d at 722.

12 The record likewise supports the ALJ's findings that plaintiff was consistently assessed to
13 have stable mental health and that her mental-health providers found her medications were
14 effective. AR 292, 295, 301, 304. These, too, are valid reasons to discount the plaintiff's
15 subjective statements. *See* 20 C.F.R. § 404.1529(c)(3); *Burch v. Barnhart*, 400 F.3d 676, 681
16 (9th Cir. 2005). Although plaintiff asserts that she was "either quitting or being fired from jobs
17 because of her symptoms" at the same time Dr. Morris was describing her condition as stable
18 while she was on medications, the ALJ was not required to credit her preferred interpretation of
19 her self-reports to Dr. Morris. Because substantial evidence supports the ALJ's finding, the Court
20 will uphold it.

21 The ALJ thus gave clear and convincing reasons to discount plaintiff's subjective
22 symptom testimony.

1 **III. The ALJ's Assessment of Lay Witness Testimony**

2 The plaintiff also contends that the ALJ erred in rejecting lay-witness testimony about her
3 impairments.

4 Lay testimony regarding a claimant's symptoms "'is competent evidence that an ALJ
5 must take into account, unless he or she expressly determines to disregard such testimony and
6 gives reasons germane to each witness for doing so.'" *Diedrich v. Berryhill*, 874 F.3d 634, 640
7 (9th Cir. 2017) (quoting *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)). In rejecting lay
8 testimony, the ALJ need not cite the specific record as long as "arguably germane reasons" for
9 dismissing the testimony are noted, even though the ALJ does "not clearly link his determination
10 to those reasons," and substantial evidence supports the ALJ's decision. *Lewis*, 236 at 512. The
11 ALJ may "draw inferences logically flowing from the evidence." *Sample*, 694 F.2d at 642.

12 Plaintiff's mother submitted a third-party function report in May 2014. AR 202-09. She
13 wrote that bipolar disorder causes plaintiff to sleep up to 18 hours a day when she is "low;" that
14 "[h]er highs make her exhausted" and give her "un-realistic expectations of other;" and that at
15 work "she gets frustrated at others expectations of her [and] telling her what to do [and] how to
16 do tasks." AR 202, 209. She provided other information about plaintiff's daily activities and
17 limitations that was largely consistent with the plaintiff's testimony. *See* AR 203-09.

18 The ALJ gave "minimal weight" to statements made by plaintiff's mother, explaining
19 that they "do little more than reiterate the claimant's allegations." AR 26.

20 Because the statements of plaintiff's mother were similar to plaintiff's own testimony, the
21 ALJ's valid reasons for discounting plaintiff's statements also provided germane reasons to
22 discount the lay testimony. *Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir.
23 2009) ("In light of our conclusion that the ALJ provided clear and convincing reasons for
24 rejecting [claimant's] own subjective complaints, and because [layperson's] testimony was
25

1 similar to such complaints, it follows that the ALJ also gave germane reasons for rejecting her
2 testimony.”); *see also Fry v. Berryhill*, 2017 WL 3149890, at *5 (E.D. Cal. July 25, 2017).

3 CONCLUSION

4 Based on the foregoing discussion, the undersigned finds the ALJ did not err in
5 determining that plaintiff was not disabled. Defendant’s decision to deny benefits is therefore
6 AFFIRMED.

7 Dated this 4th day of October, 2018.

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Theresa L. Fricke
11 United States Magistrate Judge
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